

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-152218-08

Date: MAY 14, 2009

Re:

Legend:

Grantor =

Daughter =

Date 1 =

Date 2 =

Trust =

State =

State Court =

State Law =

Dear _____ :

This responds to a letter dated December 10, 2008, from your authorized representative, requesting gift, estate, and generation-skipping transfer tax rulings with respect to a proposed modification of Trust.

On Date 1, Grantor established four separate trusts, one for the primary benefit of each of Grantor's children. This ruling request applies to Trust, established for the benefit of Daughter and her issue. Daughter is over age 40.

Under the terms of Trust, Daughter may request that any and all trust income be distributed to her each year. Each year Daughter may also request distributions of corpus not to exceed the greater of \$5,000 or five percent of the value trust at the time of the request. Upon the death of Daughter, the entire trust is to be distributed in equal shares to her then living children, provided that if a child is under age 25, the child's share will remain in trust for that child. If Daughter dies without living issue, the trust estate is to be

divided equally among the then living children of Grantor and to the children, per stirpes, of any deceased child of the Grantor.

Pursuant to State Law, Grantor, Daughter, and Daughter's children have petitioned State Court to modify Trust. The modification provides that:

No child of the beneficiary shall receive (or continue to receive) any distribution of principal or income from the trust if prior to entering into marriage or any legally recognized union he or she does not execute a valid premarital agreement under the relevant state's law declaring that the trust property is and shall remain his or her separate property. If a child of the beneficiary enters into any marriage without having executed such a premarital agreement protecting the trust property (which premarital agreement shall remain effective during the marriage), he or she shall, as of the date of the marriage, be deemed to have predeceased the beneficiary and this Trust shall be read accordingly. The purpose of this provision is to preserve and protect the trust property for the benefit of the beneficiary's children.

The modification further clarified that the terms "child" and "children" include only the immediate offspring of the person so designated and does not include any further descendants or issue.

On Date 2, State Court approved the modification pending Internal Revenue Service approval.

Trust became irrevocable prior to September 25, 1985, and it is represented that no additions have been made to Trust after said date.

You have requested rulings that the modification of Trust will not (1) affect the exempt status of Trust under § 2601 of the Internal Revenue Code; (2) result in any gift for federal gift tax purposes by Grantor, Daughter, or other trust beneficiaries; and (3) result in any estate tax liability to the Grantor.

Ruling Request 1

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under section 1433 of the Tax Reform Act of 1986 (the Act), GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b) will not cause the

trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or person who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

State Law provides that a non-charitable irrevocable trust may be modified if, upon petition, the court finds that the settler and all beneficiaries consent to the proposed modification.

In the instant case, the modification of Trust pursuant to State Court Order provides that if any child of a beneficiary fails to execute a premarital agreement declaring that the trust property is and shall remain his or her separate property, then such child will be treated as predeceasing said beneficiary. In that case, the interest of a child will be distributed to Grantor's children according to the terms of Trust. In no event will property pass to a lower generation by reason of the modification. Further, the modification does not extend the time for vesting of any beneficial interest. Under these circumstances, based on the facts submitted and the representations made, we conclude that the modification as approved by State Court order will not cause Trust to lose its exempt status for generation-skipping transfer tax purposes.

Ruling Requests 2 and 3

Section 2501 imposes a tax on the transfer of property by gift by any individual.

Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that (1) if the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the

date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under §§ 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate includes the value of any property (or interest therein) that would have been so included. Under § 2035(b), the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse during the three year period ending on the date of decedent's death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death, (1) possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2037(a) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

In this case, the Grantor and beneficiaries have not made taxable gifts by consenting to the modification. The beneficial interests in the Trust subsequent to the modifications are identical to those prior to the modification. Therefore, based on the facts submitted and representations made, we conclude that the modification will not result in any gift for federal gift tax purposes by Grantor, Daughter, or other trust beneficiaries.

In order for §§ 2035 through 2038 to apply, the decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. In the present case, Grantor has not retained any interest in the income or corpus of the Trust assets. Thus, based on the facts submitted and representations made, we conclude that the

modification will not result in any estate tax liability to the Grantor under §§ 2035 through 2038.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lorraine Gardner
Senior Counsel, Branch 4
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes
Copy of this letter